

**Legal Issues Related to Using the National Healthcare Safety Network to Report Data mandated by  
SB 739  
Meeting Notes from October 16, 2007**

**Present on the call:**

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**Situation:**

The SB 739 Healthcare-Associated Infections (HAI) Advisory Committee has recommended the use of the National Healthcare Safety Network (NHSN) of the Centers for Disease Control for hospitals to report mandated data about process measures. Several questions arose during the task force discussion including:

Is patient specific data submitted to the NHSN discoverable and admissible in California court? Will the fear of civil liability deter reporting of information? What is the best way to protect this information?

Does California law permit hospitals to provide patient identifiable information to NHSN or other national groups?

**Background:**

NHSN is a voluntary national system for monitoring healthcare-associated infections. Their initial focus has been on outcome measures (infections in patients and healthcare personnel) and is expanding to include process measures. The NHSN opened enrollment to all hospitals in June 2007. To date few California hospitals (approximately 20) have joined.

NHSN appears to be the only scientifically valid national HAI reporting system available that would meet the reporting mandate in SB 739. NHSN will likely be the method for hospitals to collect and report HAI data.

**Assessment:**

There are no protections in state or federal law that would exempt the patient identifiable information from discovery and admissibility in state or federal court. NHSN only requires a patient identifier, gender and date of birth. Hospitals could create a unique identifier. It is unlikely that a medical malpractice suite would be in federal court; however there are no state law protections to prohibit this reporting from use in state court.

California law (Civil Code section 56.10) does permit a health care provider to provide medical information when otherwise specifically required by law. This permission would not include disclosure of HIV test results, substance abuse status/treatment and psychiatric status/treatment; these conditions are specifically covered in other sections of the law that would prohibit the disclosure of such information.

**Recommendation:**

Ask the CDC/HNSN if the unique identifier prohibit discoverability /admissibility? If that would prohibit discoverability /admissibility it should be recommended to the task force for inclusion in the direction to hospitals in using NHSN.

Clean up legislation to exempt reports from discovery and admission into evidence in California courts, administrative hearings, arbitrations, and other legal proceedings should be pursued. It is suggested that the California Department of Public Health sponsor the legislation.